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CASEY SHPALL, Environmental Enforcement Section
Land & Natural Resources Division
United States Department of Justice
Post Office Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 633-4160 CS-2595

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WILLIAM T. WALSH, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, : Hon.

Plaintiff, :

v. :

Civil Action No. 90-1672(SSB)

COMPLAINT

EDWARD LECARREUX and
LIGHTMAN DRUM COMPANY, INC.,

Defendants.

The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges:

STATEMENT OF THE CASE

1. This is a civil action brought against defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9601 et seq. This action seeks to recover from defendants the costs incurred by the United States in response to a release and/or threat of release of hazardous substances at the Dane Marine Salvage Corporation Site ("Dane Marine Site" or "Site"), and declaratory judgment that defendants are liable for future costs which may be incurred by the United States in connection with the Site, pursuant to Section 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(g)(2). This action also seeks the imposition of civil penalties pursuant to

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42 U.S.C. § 9601(20), and Section 107(a)(2), 42 U.S.C. § 9607(a)(2).

5. Lightman Drum Company, Inc. ("Lightman Drum") is a Pennsylvania corporation and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Lightman Drum, by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by Lightman Drum at the Duane Marine Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3). Lightman Drum accepted hazardous substances for transport to disposal or treatment facilities or sites selected by it, and transported such hazardous substances for disposal or treatment to the Duane Marine Site which Site Lightman Drum "selected" within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

GENERAL ALLEGATIONS

6. The Duane Marine Site occupies approximately seven acres of land at 26 Washington Street, Perth Amboy, Middlesex County, New Jersey. The Site is identified by the Middlesex County tax assessor's office as Block 238, Lots 5, 5R, 6 and 6R.

7. The Site is located within a heavily populated and industrialized area. The Site directly borders the Arthur Kill, a portion of the Hudson River estuarine system.

8. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

9. Duane Marine Salvage Corporation ("Duane Marine"), a New York corporation, was licensed to conduct business in the State of New Jersey in 1975. In June 1978, Edward Lecarreux, President of Duane Marine, purchased the Site. Duane Marine operated as an oil spill cleanup contractor whose activities at the Site from at least 1978 until 1980 included the storage, treatment, blending and reprocessing of waste oils.

10. Duane Marine accepted the following waste types at the Site: tank bottoms, waste oils, oil sludge, solvents, acids, alkali solution, flammable liquids, paint sludge, alcohols, plasticizers, wastewaters containing styrene and pharmaceutical wastes.

11. On July 7, 1980, a major fire at the General Cable Company, which is located next to the Duane Marine Site, spread to the adjoining Duane Marine Site resulting in the destruction of several buildings, boats and vehicles on the property. Approximately 2000 55-gallon drums of waste chemicals located at the Site were consumed during the fire. Subsequent to the fire, Duane Marine discontinued operations and abandoned the Site.

12. The following containers were left at the Site after Duane Marine ceased operations: approximately 3,500 metal 55-gallon drums, two dozen metal tanks, six tankers, three box trailers, six roll off dumpsters, two trucks, as well as construction debris, piles of spent boom and sorbent material.

13. The New Jersey Department of Environmental Protection ("NJDEP") conducted a sampling program of various

containers at the Site between September 1980 and June 1981. NJDEP's sampling analysis revealed that there were numerous "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), at the Site including, but not limited to: benzene, toluene, ethylbenzene, 1,2-dichloroethane, butylbenzylphthalate, bromoform, dimethyl phthalate, 1,2-dichloropropane, dichlorobromomethane, phenol, tetrachloroethylene, polychlorinated biphenol (PCB), PCB/1254, PCB/1221, PCB/1216, trichloroethylene, total-xylene, methylene chloride, 1,1,1,-trichloroethane, arsenic, chlorobenzene, chromium, selenium and silver.

14. On July 12, 1984, oil was observed by the United States Coast Guard ("USCG"), NJDEP and EPA officials to be flowing directly into the Arthur Kill from several seeps along the edge of the Site. Subsequent sampling and analysis of the oil by USCG showed it to contain, among other things, PCBs, barium, cadmium and lead, which are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. Pursuant to an Immediate Removal Action undertaken by EPA in July 1984, a boom was deployed to contain the oil spill and a trenching operation was performed on the Site. Measures were also taken to secure the Site.

16. On November 10, 1984, the United States Department of Health and Human Services issued a memorandum to EPA stating that the Site represents an immediate and imminent threat to

human health because of the threat of human contact with the on-site contaminants, the continuing hazards due to off-site spread of contaminants and the threat of fire or explosion.

17. EPA authorized a second Immediate Removal Action in 1985 to remove containerized waste and obvious surface/soil contamination at the Site.

FIRST CLAIM FOR RELIEF
RESPONSE COSTS

18. The allegations contained in paragraphs 1-17 are realleged and incorporated herein by reference.

19. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for --

(A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;

20. Hazardous substances, within the meaning of § 101(14) of CERCLA, 42 U.S.C. § 9601(14), were disposed of at the Duane Marine Site at all times relevant to this action.

21. There were releases within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and the threat of releases of hazardous substances into the environment at or from the Duane Marine Site at all times relevant to this action.

22. The actions taken by the United States in connection with the Duane Marine Site constitute "removal" actions within the meaning of Section 101(23) of CERCLA, 42 U.S.C. § 9601(23), and "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

23. The costs incurred by the United States in connection with the Duane Marine Site were not and are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

24. The United States has incurred and will continue to incur response costs in connection with the Duane Marine Site. As of January 28, 1989, these response costs are in excess of \$216,170.00.

25. A demand letter was sent to defendants by EPA on August 3, 1989, requesting reimbursement of response costs incurred by the United States in connection with the Duane Marine Site.

26. To date, defendants have failed to reimburse the United States for any of the response costs incurred in connection with the Duane Marine Site.

27. Pursuant to Section 107(a) and 113(g)(2) of CERCLA, 42 U.S.C. §§ 9607(a), 9613(g)(2), defendants are jointly and severally liable to the United States for all costs incurred and to be incurred by the United States, including prejudgment interest, in connection with the Duane Marine Site.

SECOND CLAIM FOR RELIEF
CIVIL PENALTIES

28. The allegations contained in paragraphs 1-27 are realleged and incorporated herein by reference.

29. Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), provides that

Any person who, without sufficient cause, willfully violates, or fails or refuses to comply with, any order of the President under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

The phrase "without sufficient cause" was not contained in the original Section 106(b)(1) of CERCLA but was added by the Superfund Amendments and Reauthorization Act ("SARA") (October 17, 1986), which amendment also raised the amount of the fine from \$5,000 to \$25,000.

30. EPA determined that the release and threat of release of hazardous substances to the environment from the Duane Marine Site may present an imminent and substantial endangerment

to the public health, welfare and the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

31. Based upon the determination of imminent and substantial endangerment, EPA issued an Administrative Order on December 4, 1984, Index No. II-CERCLA-50102, pursuant to the authority of § 106(a) of CERCLA, 42 U.S.C. § 9606(a), to thirty-five respondents, including Lecarreux.

32. The December 4, 1984, Administrative Order required each respondent to, inter alia, undertake immediate corrective actions at the Duane Marine Site in accordance with the directives and schedule specified therein.

33. Lecarreux failed and/or refused to comply with the terms of the December 4, 1984 Administrative Order without sufficient cause.

34. Based upon the determination of imminent and substantial endangerment, EPA issued an Administrative Order on March 22, 1985, Index No. II-CERCLA-50107, pursuant to the authority of § 106(a) of CERCLA, 42 U.S.C. § 9606(a), to twenty-two respondents, including Lightman Drum.

35. The March 22, 1985, Administrative Order required each respondent to, inter alia, undertake immediate corrective actions at the Duane Marine Site in accordance with the directives and schedule specified therein and in cooperation with the respondents under prior Administrative Orders who were already acting to clean up the Site.

36. Lightman Drum failed and/or refused to comply with the terms of the March 22, 1985, Administrative Order without sufficient cause.

37. The corrective actions required by the Administrative Orders were completed by the participating respondents, and EPA certified the completion of the work at the Site on May 20, 1987.

38. Pursuant to § 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1), defendants are subject to civil penalties of not more than \$5,000 per day for violations occurring before October 18, 1986, and not more than \$25,000 per day for such violations on or after October 18, 1986.

THIRD CLAIM FOR RELIEF
PUNITIVE DAMAGES

39. The allegations contained in paragraphs 1-38 are realleged and incorporated herein by reference.

40. Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provides, in pertinent part, that:

If any person who is liable for a release or threat of release of a hazardous substance fails without sufficient cause to properly provide removal or remedial action upon order of the President pursuant to section 9604 or 9606 of this title, such person may be liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of any costs incurred by the Fund as a result of such failure to take proper action.

41. Defendants are liable for a release or threat of release of hazardous substances from the Duane Marine Site. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a),

Lecarreux was issued an Administrative Order by EPA on December 4, 1984, and Lightman Drum was issued an Administrative Order by EPA on March 22, 1985. Defendants failed, without sufficient cause, to properly provide removal or remedial action as required by these Administrative Orders.

42. Pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), defendants are liable to the United States for punitive damages in an amount at least equal to, and not more than three times, the amount of costs incurred and to be incurred by the Superfund as a result of their failure to take proper action pursuant to the Administrative Orders issued to them by EPA under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. Enter judgment in favor of the United States and against the defendants, jointly and severally, for all costs incurred and to be incurred by the United States, including prejudgment interest, for response actions related to the Duane Marine Site;

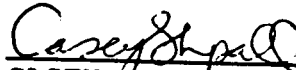
2. Enter judgment in favor of the United States and against defendants for civil penalties in the amount of \$5,000 per day for violations occurring before October 18, 1986, and \$25,000 per day for such violations on or after October 18, 1986;

3. Enter judgment in favor of the United States and against defendants for punitive damages in an amount equal to three times the amount of costs incurred and to be incurred by the Superfund as a result of their failure to take proper action;
4. Award the United States its costs of this action; and,
5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

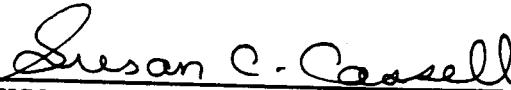


RICHARD B. STEWART
Assistant Attorney General
Land and Natural Resources Division



CASEY SHPALL
Environmental Enforcement Section
Land & Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(202) 633-4160

SAMUEL A. ALITO, JR.
United States Attorney
District of New Jersey



SUSAN C. CASSELL
Assistant United States Attorney
Federal Building
970 Broad Street, Room 502
Newark, New Jersey 07102
(201) 621-2700

OF COUNSEL:
JOSEPH A. SIEGEL
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region II
26 Federal Plaza - Room 302
New York, New York 10278